No. 53

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA,
Appellant,

vs.

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., INTERNATIONAL BOXING CLUB, MADISON SQUARE GARDEN CORPORATION, JAMES D. NORRIS and ARTHUR M. WERTZ.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE STATE OF NEW YORK AND THE NEW YORK STATE ATHLETIC COMMISSION, AS AMICUS CURIAE

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Introduction

The Amicus Curiae herein is a duly constituted administrative agency of the State of New York; a division of that State's Department of State and its organic law, (Laws of New York; Chapter 912 of the Laws of 1920, as amended), entrusted the entire field of professional boxing and wrestling to a Commission with powers to license, to make all rules and regulations necessary to the best interests and proper conduct of these sports, and to completely administer and control every facet of such boxing and wrestling.

The facts in the instant case have been fully and clearly set forth in the Brief for the United States and we will not burden the Court with their repetition. Similarly, we are content with and adopt the noting of jurisdiction, and the review of all prior proceedings in the case therein related. We take no position as to whether the monopoly charges levelled against the appellees by the Government can or should be sustained.

The Contentions of the Amicus

The New York State Athletic Commission argues solely that boxing in its important aspects, which manifestly includes the promotion and exhibition of professional championship boxing contests, should not be excluded from the scope of federal antitrust statutes. To grant such a judicial exemption would leave highly integrated commercial enterprises subject to no binding uniform control and operating without possibility of effective overall regulation in a chaos of competing and overlapping state dominions. In short, realistically viewed, such boxing promotions have been and can be so unlocalized as to make federal regulation not only legally appropriate but urgently required.

POINT I

THE PROMOTION AND EXHIBITION OF CHAMPIONSHIP BOXING CONTESTS SHOULD BE SUBJECT TO FEDERAL ANTITRUST LEGISLATION.

The complaint herein was dismissed by the District Court on the authority of *Toolson* v. *New York Yankees*, 346 U. S. 536. The limitations of that decision and its manifest confinement solely to baseball have been exten-

sively outlined by the Government. We can add nothing to those arguments except to conclude, in consonance with the appellant, that this Court's decisions in the baseball cases do not require, under the doctrine of Stare Decisis, a holding that the promotion of championship boxing contests, as they are presently conducted, are not interstate commerce within the Sherman Act.

Today, television, not the box office, is the tail that swings the boxing kite. It brings the bout, and surely any championship contest, to an audience of millions throughout the country thus dwarfing the paid admissions at the arena.

The sale of television, radio and motion picture rights in and to these contests provides by far the greatest portion of boxing revenues, to the promoter, the fighters and to the States which tax the gross receipts of these contests, revenue which States are anxious to protect and eager to augment. But most important, television has made the place of promotion a far less important consideration to the promoter with the consequent result that in arranging for a title match, or maintaining and operating a business of boxing championship promotions, such entrepreneur may now "shop around" for the jurisdiction whose regulatory agency or the lack of one, makes the promotion the least supervised or the cheapest. There is little, if any, binding uniformity in the regulations of the several States on questions of monopoly, standards of licensing and tax rates, and State policy on these issues in many jurisdictions is often incomplete or wholly unexpressed.

Some progress has been made by informal compact but in the main no one State agency has the power or jurisdiction to control boxing in any comprehensive fashion. It is essentially a transient industry; with suitable arenas

in most of the important cities. Moreover, boxers and managers, and the contracts which they execute, can be licensed and registered in whichever State or States they may find acceptance.

Thus, if the allegedly monopolistic practices outlined in the complaint (R5-8) were outlawed in New York, and the license of the promoting corporation accordingly suspended or revoked, the appellees have dozens of other jurisdictions in which these same practices may not be considered any obstacle to the sanctioning of a lucrative championship contest. Nevertheless, television enables the promoter to capture the huge New York audience who may see and hear a championship fight that its Commission, on public policy grounds, would not sanction for a New York arena. It is apparent therefore that the interstate aspects affecting the control of boxing are so crucial as to eliminate effective local supervision.

The instant case serves amply as a concrete example. If, as the complaint herein alleges, the professional services of boxing champions and contenders in the important weight classes have been reserved exclusively for the benefit of a single promoter or for a group of affiliated promoting parties who also control outstanding sports arenas in leading cities, then the transient system of licensing among the several States renders wholly illustory any single local Commission's power to safeguard the best interests of boxing from a potential monopoly.

States cannot band together to legally control boxing without surrendering sovereignty or obtaining the approval of Congress. Yet many boxing problems, such as health and safety regulations, can be adequately treated on a local basis because their interstate ramifications are not so extensive or elusive. So far as we know, New York is the only

state that has formally questioned the validity of the alleged monopolistic practices herein cited by the United States. New York's limited jurisdiction and power in the premises can not even approach that of the District Court in the event the federal antitrust laws are applicable and the charges are sustained.

But if the holding of inapplicability perseveres, the New York Commission cannot realistically wholly solve this problem which is national in scope and may well involve competing and overlapping state authorities enforcing different public policies. While the subjection of promoting corporations to these federal statutes will not bring all the needed uniformity into boxing regulation, it will nevertheless serve mightily to harness complex interstate commercial enterprises which have the power to at least unwittingly threaten free enterprise in the sport.

THE JUDGMENT OF THE DISTRICT COURT WAS INCORRECT AND SHOULD BE REVERSED.

Respectfully submitted,

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